

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

555255-012442

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on June 10, 2009

Signature

Typed or printed name Debra Pejeau

Application Number

10/645,283

Filed

08/21/2003

First Named Inventor

Fraser Gibbs

Art Unit

2416

Examiner

C. B. Patel

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

Joseph M. Sauer/

Signature

☐

assignee of record of the entire interest.

Joseph M. Sauer

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

Typed or printed name

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attorney or agent of record.

47,919

216-586-7506

Registration number

Telephone number

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attorney or agent acting under 37 CFR 1.34.

June 10, 2009

Registration number if acting under 37 CFR 1.34

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below".

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\*Total of \_\_\_\_\_ forms are submitted.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Gibbs, et al.  
Title : SYSTEM AND METHOD FOR ERASING A  
DATA FRAMES QUEUE ON A MOBILE DEVICE  
Application No. : 10/645,283  
Filed : August 21, 2003  
Group Art Unit : 2416  
Examiner : Chandrabas B. Patel

**REQUEST FOR PRE-APPEAL BRIEF CONFERENCE**

Dear Sirs:

The Examiner has issued a Final Rejection of the pending claims. The Applicant hereby requests review of the Final Rejection prior to filing an appeal brief for the reasons set forth below. Any fees due should be charged to Jones Day Deposit Account No. 501432, ref: 555255-012442.

## ARGUMENT

The Final Office Action issued on April 16, 2009 rejects each of the pending claims under 35 U.S.C. § 103(a). The Applicant respectfully submits that these rejections demonstrate clear error and must be withdrawn.

### *Independent Claim 1:*

The principle error in the rejection of claim 1 is the Examiner's misinterpretation of the claim term "network coverage." Specifically, claim 1 recites the method step of "terminating the first GPRS MM context while the mobile device is *out of network coverage* of any GPRS wireless network." The Examiner has interpreted this claim element to read on a mobile device that is not connected to a GPRS wireless network.<sup>1</sup> However, this interpretation is clearly unreasonable in view of both the specification and the commonly understood meaning of the term "network coverage."

The term "network coverage" clearly refers to the communication range of the network. That is, a mobile device is "out of network coverage" if it is not within the area encompassed by the network's communication range. This is the broadest reasonable interpretation that can be given to the term in view of both the specification and the common meaning. For example, Fig. 1 (reproduced below) shows a block diagram of mobile devices that are in and out of "network coverage." The dotted line (100) in Fig. 1 shows the coverage area for a network base station (110), and mobile device 122 in Fig. 1 is out of "network coverage" because it is located outside of the coverage area (110). The application's use of the term "network coverage" is also

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<sup>1</sup> See, Final Office Action, Response to Arguments ("This the call is out of coverage with regard to GPRS network since it is not connected and will not try to reconnect until further data communication is require.") See also, Final Office Action, page 3.

consistent with the common meaning of the term. For instance, the American Edition of the Oxford Dictionary defines “coverage” to mean “area or amount covered.”<sup>2</sup>

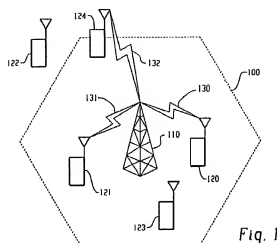


Fig. 1

Because the Examiner’s rejection relies on a clear misinterpretation of the claim term “network coverage,” the rejection is improper and should be withdrawn. Further, a proper rejection cannot be made because, among other distinctions, the cited references do not teach or suggest “terminating the first GPRS MM context while the mobile device is *out of network coverage* of any GPRS wireless network.” With respect to this claim limitation, the Final Office Action cites to the Sinnarajah reference (U.S. 7,180,879), and particularly its description of a “dormant state” where the wireless device releases the physical channel when no data is flowing in either direction over the network. However, the “dormant state” in Sinnarajah does not signify that the device has moved out of network coverage, but rather that the device has become inactive, without regard to whether it is within network coverage or not.

Moreover, the rejection of claim 1 is also improper because it fails to consider the claim limitations as a whole, as required by MPEP 2141.02. Instead, the rejection cites to portions of references that, taken in context, have absolutely nothing to do with the language of the claim.

<sup>2</sup> The Oxford Desk Dictionary, American Edition, Oxford University Press (1995), p. 132.

For instance, with respect to the claim limitation “terminating the first GPRS MM context while the mobile device is out of network coverage of any GPRS wireless network,” the office action cites to Madour as teaching the first half of the claim element (“terminating the first GPRS MM context”) and cites to Sinnarajah as teaching the second half of the claim element (“the mobile device is out of network coverage.”) By pulling the claim language apart in this way, the claim element loses all of its intended meaning, and the examiner is merely matching out-of-context words from the claim with equally out-of-context words from various references. Clearly, neither Madour nor Sinnarajah have anything to do with the recited claim element “terminating the first GPRS MM context while the mobile device is out of network coverage of any GPRS wireless network.” Accordingly, the rejection over Madour and Sinnarajah fails to establish that a person skilled in the art would have derived the claimed invention, and thus fails to establish a *prime facie* rejection under 35 U.S.C. § 103(a).

#### ***Independent Claim 24:***

Similar to claim 1, independent claim 24 recites the step of “terminating the first PDP context while the mobile station is out of network coverage with any wireless data network.” The Applicant submits that claim 24 and its dependent claims are patentable over the cited references for at least the same reasons set forth above with respect to claim 1.

#### ***Independent Claim 41:***

Independent claim 41 recites the step of “detecting that the mobile device is out-of-coverage with any wireless network.” Again, the office action cites to Sinnarajah as teaching this claim limitation. As explained above, this conclusion is incorrect because the “dormant state” described in Sinnarajah does not require that the mobile station be out of network coverage, but rather only requires a period of user inactivity. A mobile station in Sinnarajah may

well be in the “dormant state” and still within network coverage. For at least this reason, the Applicant submits that claim 41 and its dependent claims are patentable over the cited references and the rejections under 35 U.S.C. § 103 should be withdrawn.


### ***Independent Claim 51***

Independent claim 51 is a system claim that recites executable network management program code that performs the method of claim 41 when executed. Claim 51 and its dependent claims are therefore patentable for at least the same reasons as claim 41.

### ***Conclusion***

For at least the above reasons, the Applicant respectfully submits that the rejections of the pending claims in the Final Office Action are based on clear error and must be withdrawn. The Applicant further submits that the pending claims are patentable over the cited reference and in condition for allowance.

Respectfully submitted,



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